IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 153 OF 2005

IN

NOTICE OF MOTION NO.351 of 2005

IN

LONG CAUSE SUIT NO.416 OF 2005

Afroze A. Shaikh ... Appellant (Orig.Plaintiff)

V/s

The Municipal Corporation of Greater Mumbai ... Respondent (Orig.Defendant)

Shri. P.M.Pradhan with Ajit S. Karwande for appellant

Shri.M.V.Walawalkar with Miss Jogalekar for respondent

Coram : A.S. Oka, J.

Date : 8th February,2005

JUDGMENT

1 Admit.The Respondent waives service. The Appellant is the original plaintiff. His challenge in the suit is to a notice under section 351 of Bombay Municipal Corporation Act 1888 and the order passed on the said notice.

2 By a notice of motion which was taken out by the Appellant, a prayer for temporary injunction was made in respect of shop (godown) Nos. 8 and 9. While considering the prayer for ad-interim relief, the learned trial judge has protected the godown No.9 from demolition. However,the

prayer for ad-interim relief as regards godown No.8 has been rejected.

3 Mr.Pradhan, learned counsel appearing for appellant has invited my attention to the notice under section 351 and the reply issued by the Appellant to a said notice. He submits that from the schedule of notice under section 351 it appears that the notice was issued in respect of a structure known as M.K.Market. In the reply, a contention has raised that the Appellant is a member of Anees Chambers Co-operative Society which is the owner of M.K. Market. He further submits that so far as godown No.8 is concerned, it is not an open space but it is a part and parcel of the premises owned by the said society. He also submits that the learned trial judge has not granted ad-interm relief in respect of godown No.8 only on the ground that in some of bills produced on record a reference is made to “open space premises”.Shri Walawalkar for the Respondent Corporation has supported the impugned order.

4. After hearing the submissions of the learned counsel appearing for the parties I was inclined to admit the appeal for final hearing. Shri Walwalkar, learned counsel appearing for Respondent Corporation fairly stated that instead of keeping the Appeal pending, the impugned order may be set aside and learned trial judge may be directed to hear the prayer for ad-interim relief afresh so that all documents on record and submissions of rival parties can be considered properly. The suggestion of Shri

Walawalkar, learned counsel for respondent is reasonable and fair.Therefore, the impugned order will have to be quashed and set aside.

ORDER

1. The impugned order dated 27th January 2005 is quashed and set aside.
2. The learned trial judge will hear and decide afresh the prayer made by the Appellant in the notice of motion for grant of ad-interim relief.
3. Parties will appear before the learned trial judge on Tuesday 15th February, 2005 at 11.00 a.m.Both the parties will be at liberty to produce additional documents on that day.
4. The learned trial judge will consider the prayer made in the notice of motion for the grant of ad-interim relief on its own merit and will pass appropriate order.The learned Trial Judge will decide the matter without being influenced by the observations made in this order and in the impugned order.
5. For a period of 3 weeks from today both the parties will maintain status-quo as of today in respect of the suit structure to enable the learned trial judge to consider the prayer made in the notice of motion.
6. All contentions of both the parties on merits are kept open.

7.Parties concerned to act on an authenticated copy of this order.

(A.S. Oka, J.)